OBSTACLES IN THE EU SINGLE MARKET
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FOREWORD

Embedded in the four basic freedoms regarding the movement of goods, people, services and capital without any customs barriers, the European single market that was founded in 1993 is the biggest common market in the world. Thanks to the freedom of movement of services, many companies from the craft sector from Baden-Württemberg are also making successful use of their market opportunities in other EU countries, thus securing local jobs.

Although the single market has existed for over 25 years now, there are still trade barriers which often result from the non-uniform implementation of European guidelines to the detriment of small and medium-sized enterprises (SMEs). In light of the increase in protectionist tendencies within the individual member states, we should reflect on what the free single market has achieved up to now for the economy and society in general. Open markets are of paramount importance, especially for a federal state like Baden-Württemberg with its high volume of exports.

It is of decisive importance for the acceptance of open borders by the general public that a large number of the small and medium-sized enterprises which provide the majority of jobs in our economy benefit from the single market. This requires a watchful eye for the outline conditions required here, as well as practical implementation of single market rules in a manner which is generally friendly to SMEs.

With this brochure, we have helped to make it clear to politics what effects trade barriers have on medium-sized businesses, while sharpening awareness on a European level of the fact that the prosperity gained from the European single market cannot be taken for granted. We have to speak up again and again for open borders and markets.

In this new edition, we point out the latest obstacles with the aim of sensitising decision-makers to them. We represent the interests of skilled companies from the craft sector on a European level and show that quick solutions are possible in several cases. Our goal is to enable fast and non-bureaucratic cross-border services for SMEs and companies from the craft sector in particular.

Markets are like parachutes. They work best when they are open.

Rainer Reichhold
President
Baden-Württemberg Confederation of Skilled Crafts

Johannes Ullrich
President Freiburg Chamber of Skilled Crafts and Chairman of the Regional Committee Europe
INTRODUCTION

THE EUROPEAN SINGLE MARKET

The European single market has been in existence since 1993. The largest market in the world has grown from the objective of creating an economic area with uniform regulations without any customs. Gross domestic product (GDP) today is around twelve trillion euros, while the competitiveness of the European economy has been considerably increased at the same time. The advantages are achieved through uniform legislation, such as directives and regulations. Whereas European regulations are legally adopted one-to-one in the member states, European directives must first be converted into the national law of each member state. This is done in many different ways, however, with the result that non-tariff barriers to trade within the single market are also created through constant updating.

THE EUROPEAN PARLIAMENT ALSO DENOUNCES NON-TARIFF TRADE BARRIERS

- Obstacles stand clearly in the way of completing the European single market.
- These obstacles are often motivated by protectionism and trigger bureaucratic processes which often have no relation to their purpose.
- Some obstacles are unjustified, some measures are disproportionate.
- The European Parliament is therefore demanding that the Commission takes action to remove these barriers.
- Ultimately, all non-tariff barriers which create unequal competitive conditions should be removed.

BUREAUCRACY IMPEDES EVERY SECOND EXPORTER

According to a survey conducted by BWHT in spring 2016, skilled crafts businesses in Baden-Württemberg achieve 4.4 percent of their turnover abroad. This amounts to roughly 3.7 billion euros. Add to this around three billion euros in indirect sales.

In 2015, 6,500 (7.3 percent) of skilled crafts businesses in Baden-Württemberg achieved sales with foreign customers. 42 percent of these exporters have fewer than five employees and almost two thirds of them fewer than ten. Foreign business transactions are therefore of fundamental appeal to small companies from the craft sector too.

Question 1: From which regions do you receive your foreign orders?

- Switzerland
- France
- Austria
- Other EU countries
- Rest of Europe
- Russia
- USA
- Asia
- Turkey

This question was only put to companies with foreign business in 2015.
Reading aid: 70 % of the companies had foreign business transactions with Switzerland among other regions. Multiple answers were possible.
Question 2: If you do business abroad or deliver to other countries, what obstacles are there to your foreign business?

- Bureaucratic obstacles abroad
- Customs and import restrictions
- Insufficient market knowledge
- Language difficulties
- Tax law problems

This question was only put to companies with foreign business in 2015. Multiple answers were possible.

Question 3: If you do not do business abroad or deliver to other countries, why does your company not engage in foreign business?

- Unsuitable range of products and services
- Lack of capacity
- Bureaucratic obstacles abroad
- Economic risk
- Insufficient market knowledge
- Customs and import restrictions
- Language difficulties

Multiple answers were possible.
THREE OF THE MAIN TRADE BARRIERS

1. POSTING OF WORKERS

Obstacles

- The provisions for registering occupational health and safety requirements, social insurance law and taxation differ considerably between the individual member states.
- Special sector-specific regulations exist (e.g. forklift license).
- More and more data is being requested in the electronic registration process.
- The bureaucratic effort required is out of proportion, especially when orders are placed at short notice.
- The details of existing regulations are often unclear.
- The expense and effort required for smaller orders and occasional foreign transactions are often uneconomical and deter smaller businesses from entering the market.

Demands of the skilled crafts sector

- The EU regulation must be applied identically by all member states.
- Information must be available in several languages, at least in English.
- Information must be easily accessible, ideally online.
- There must be uniform requirements for registration.
2. UNIFORM POINTS OF CONTACT AND NOTIFICATION REQUIREMENTS

Obstacles

- Technical and official infrastructure is lacking in several countries.
- Communication is often only possible in the official language of each country.
- Registration and wage provisions are being constantly changed.
- Access to the latest legal information is difficult at best.
- An assessment of the practical effects is hardly possible without external support.
- Additional costs are incurred on top of the time expenditure.
- The relation between fines and infringements is often disproportionate.
- Not only the time aspect but also the type and scope of the activity are taken into account.

Demands of the skilled crafts sector

- A uniform official infrastructure must be built up.
- Information must be available in English at least.
- It must be possible to use the German language.
- Sector-specific regulations must be comprehensible.

3. VALUE-ADDED TAX

Obstacles

- There are numerous exceptions to chain transactions and property-related services.
- Tax law is being constantly changed.
- The registration process is elaborate.
- The reverse charge process used for on-site assembly work and property services cannot be applied in a uniform manner.
- The input tax compensation process is applied differently.

Demands of the skilled crafts sector

- The exceptions to the rules must be stopped.
- Tax law cannot keep changing all the time.
- The reverse charge mechanism must be applied uniformly.
- Input tax compensation must be defined in a uniform manner.
FRANCE

REGISTRATION OF POSTED WORKERS

Posted workers have to be registered using the SIPSI registration system. Since the last revision, which introduced a language selection option (French, English, German, Italian, Spanish) among other improvements, this registration system has worked very well. A company located in France, the customer or a posted employee and/or the head of the company can be nominated as the representative as long as they remain in France during the posting. Although this is fundamentally to be welcomed, both posted employees as well as the heads of companies may only then be nominated as representatives if they are able to communicate in French. This is interpreted by French work inspectors to mean that the person nominated as a representative must also be able to speak fluent French.

Obstacles

- It cannot be taken from Art. 9 Para. 1e of Directive 2014/67/EU of 15 May 2014 that the person named as the point of contact must be able to speak the local language. He or she must only be able to send and receive documents and/or messages when necessary. This is also possible without knowledge of spoken French.

Demands of the skilled crafts sector

- It would be a help if the requirement to speak a language were to be extended to include the official European languages – at the very least English.
CARTE D’IDENTITÉ PROFESSIONNELLE

With the “Loi Macron” of 06.07.2015, employers in the construction sector were obliged to apply to the Union des caisses de France Congés Intempéries BTP for professional ID for their posted workers (carte d’identité professionnelle BTP). Employees must carry the ID card with them on the construction site.

Obstacles

- The Carte BTP costs 10.80 euros and has to be applied for anew for every new job by foreign companies who post employees to France, even if the same employees are posted. What this leads to in actual practice is that businesses which perform minor work in France (e.g. repairs, maintenance, warranty work, set-up etc.) sometimes have to apply for several ID cards a week for their employees, whereas companies permanently located in France are issued with the Carte BTP for the entire duration of the period of employment. The information required for the issue of a Carte BTP is loaded by the posting company into its account at the website www.cartebtp.fr from the “SIPSI” posting report. A photo of the employee then has to be included in the application prior to dispatch.

Demands of the skilled crafts sector

- As the information required for the Carte BTP is identical with that of the SIPSI posting registration, the card has no advantages when a check is made. It is possible to prove identity by means of the passport photo in the ID documents that employees carry with them. Presentation of the posting registration and an ID document would therefore be completely sufficient. The obligation of companies that post employees to apply for a Carte BTP is therefore a superfluous formality which is not in compliance with the principle of the free movement of services.
Art. R.1263-1 Code du travail stipulates that the following documentation for posted workers be kept on-site along with a French translation or, if this is not materially possible, at another place accessible by a representative of the company:

- Pay slips, proof of wage payment, work reports, employment contracts, verification of the national law applicable to the contract between the employee and the employer located in France, proof of the number of fulfilled contracts and the amount of turnover generated by the employer in his/her home country and in France, work permits (for third country nationals) and occupational health certificates.

ACCOMPANYING DOCUMENTATION

Obstacles
- The provisions of Art. R.1263-1 Code du travail have proven to put a particular strain on companies that only handle small orders which only last for a few days or even hours, as is often the case in border regions. The necessity to carry a lot of documentation with a French translation is too much trouble for some businesses and deters them from accepting orders from France.

Demands of the skilled crafts sector
- As the number of documents to be carried listed in Art. R.1263-1 Code du travail is significantly higher than the number stipulated in Art. 9 Para. 1 b) of Directive 2014/67/EU of 15 May 2014, the former does not comply with the principle of the free movement of services in our opinion. It would at least be a help if items 5, 6 and 8 did not have to be carried and only had to be submitted subsequently on request or during checks.
MINIMUM WAGE REGULATIONS (COLLECTIVE AGREEMENTS)

France not only has a general statutory minimum wage (SMIC) but also collective agreements that have been declared universally applicable and that contain minimum wage regulations which posting companies also have to comply with.

**Obstacles**
- It is not easy to keep track of the numerous collective agreements which non-French companies have such great difficulty understanding that they cannot even identify the applicable collective agreement regulations.
- The French collective agreements listed in the Legifrance website [www.legifrance.gouv.fr/initRechConvColl.do](http://www.legifrance.gouv.fr/initRechConvColl.do), which is the only source where collective agreement regulations can be accessed, are far too complicated for non-French companies and are not easy to find.

**Demands of the skilled crafts sector**
- The information on working conditions and wage comparison must be made available in a way which is clear, transparent and easily accessible.
- A clearly structured and understandable compilation of the minimum wages which must be paid should be available online.
GARANTIE DÉCENNALE INSURANCE

The “Assurance R.C. décennale” is a compulsory insurance for possible warranty claims by the awarding authority or subsequent purchaser of structures which was introduced by law on 04.01.1978 (“Loi Spinetta”). It applies to warranty claims covered by the 10-year liability regulation for work which serves the construction of buildings and structures (Art. 1792 CC). This warranty liability and related compulsory insurance system are mandatory law which cannot be waived by explicit contractual agreement. The minimum premium for insurance policies of this kind ranges from 2,500 – 3,000 euros (for individual orders as well as annual contracts).

Obstacles

- Garantie Décennale insurance is worthwhile for businesses that work regularly in France as well as those granted large-scale contracts, but not for companies which only want to do business with a low order value once or occasionally. In cases of this kind, the expected profit is often less than the insurance premium.
- Unfortunately, the advisers to the chambers of skilled crafts in the regions bordering France experience again and again that the companies from the craft sector they advise have to refuse orders from France because of the requirement to take out Garantie Décennale insurance.

Demands of the skilled crafts sector

- The insurance should not be compulsory as this form of insurance only exists in France and can involve considerable costs in individual instances.
- The EU member states must also permit other forms of insuring consumers.
Businesses which carry out energy-related renovation measures on buildings can apply for an RGE seal of quality from the responsible authorities (e.g. Qualibat). This quality seal is required so that customers can secure interest-free loans and tax credits from the state. As both the interest-free loans and the tax credits constitute a considerable advantage, French customers are not usually prepared to award contracts for energy-related renovation measures to businesses that do not have an RGE quality seal.
In order to apply for the RGE quality seal, a knowledgeable person from the company has to participate in a French-language training course which lasts for several days and which culminates in a final examination.

To complete the training and acquire the RGE quality seal incurs costs which can vary from between 600 and 1,000 euros per participant to between 1,000 and 2,500 euros, depending on the number of employees. Annual fees are then added to this sum.

Of the numerous German businesses which were interested in obtaining the RGE quality seal in the past because they were asked about it by customers in France, only a very small number have obtained it to date. Most of them failed to do so due to a lack of knowledge of French and the requirement to participate in a French-language training course with final examination.

The French system lacks the option of recognising foreign qualifications despite being obliged to do so in accordance with Art. 14 Para. 3 of the renewable energy directive (Dir 2009/28/EC of 23 April 2009). The German journeyman and master craftsman qualifications obtained in the professions which carry out energy-related renovations (e.g. electrical technician, roofer, carpenter, plant mechanic for sanitation, heating and air conditioning technology) involve skills which are taught to a high level significantly above that attained in the courses for the RGE quality seal. These qualifications should therefore be acknowledged as being of equal value and their holders released from the requirement to participate in courses of this kind.
AUSTRIA

REGISTRATION OF POSTING

The posting of workers to Austria must be registered electronically in advance using the ZKO-3 report on the proper legal basis (posting directive 96/71/EC of 16 December 1996 and its latest revision in June 2018, Directive (EU) 2018/957 of 28.06.2018 in the Official Gazette of the European Union 2018 L 173/16 with related conversion into national law by 30.07.2020). This process is transparently structured. Although registration of posting means more bureaucracy for companies from the craft sector, it cannot be seen as an obstacle.

It is imperative that the following documents are kept on site for every employee for the duration of the posting: ZKO-3 report, A1 social insurance document, employment contract, pay slips, proof of payment of wages, wage records, documents on wage categorisation, records of hours worked. Businesses that do not keep these records face stiff fines which pose problems for small and medium-sized enterprises in particular.
Obstacles

- Fines are disproportionately high. The framework for fines for missing or incomplete wage documentation and a failure to report, or failure to report any changes punctually and in full, is inappropriate and can be as much as 50,000 euros.
- A fine is imposed for every single missing document or non-submitted report for every employee. Fines quickly add up in this way. These high fines can jeopardise the very existence of small firms in particular. Add to this the fact that if companies have more than one director, a fine is imposed on each of them, effectively doubling or even tripling the fine.
- When orders are placed at short notice, these documents cannot always be produced in time. Service and maintenance work, which requires a fast response time, is therefore virtually impossible for companies from the craft sector from Baden-Württemberg. The documentation must be kept available for all employees for the entire duration of the posting to Austria, even if some workers finish earlier and have returned to Germany.
- Data protection problems can arise which are difficult to align with the General Data Protection Regulation in that sensitive wage documents and employment contracts can be viewed by colleagues if they are kept on-site. Even a sealed envelope cannot always maintain and guarantee discretion. The newly created option of lodging wage documentation with the likes of an Austrian lawyer or accountant is also awkward and involves costs which the German posting company then has to pay. That is why this option is hardly ever used by companies from the craft sector from Baden-Württemberg.

Demands of the skilled crafts sector

- It must be possible to subsequently submit incomplete documentation and this must not lead directly to the imposition of a fine.
- Fines must be proportionate with the infringement.
Services can be rendered in Switzerland within the framework of a time contingent of 90 working days per calendar year without the necessity of a work permit. To do so, the employees to be posted must be registered along with the company owner and any self-employed persons. Registration must be made eight days before the services are scheduled to begin via a central online portal which forwards the information to the responsible canton which then sends online confirmation back to the company. Penalties and stiff fines can be imposed if the registration deadline is not complied with.

Obstacles

- Apart from contract negotiations or non-binding meetings with customers to maintain business relations, activities undertaken before a contract has been signed must be reported (e.g. taking measurements or trade fair participation).
- A quick response to customer inquiries is not possible due to the eight-day waiting period.
- Exceptions to the registration deadline are granted for warranty work within a period of three months after the work has ended. As warranty periods are considerably longer, however, this exception rule is not sufficient and a new registration under observance of the eight-day waiting period becomes necessary.

Demands of the skilled crafts sector

- Pre-contractual customer contacts must be exempted from the registration requirement.
- The eight-day waiting period in the registration process should be abolished.
Depending on the line of work and canton, a compulsory deposit has been imposed on businesses working in the construction and finishing sector since 2012. Foreign businesses are also subject to this compulsory deposit, the amount of which depends on the order volume with foreign companies. Small orders of up to CHF 2,000 per year are exempted from the compulsory deposit. A deposit of CHF 5,000 has to be paid on orders of CHF 2,000 to 20,000. Order volumes in excess of CHF 20,000 per year are subject to a deposit of CHF 10,000. Several collective labour agreements (CLAs) even require deposits of up to CHF 20,000. The deposit can be paid in cash, through a so-called craft’s deposit insurance or per bank guarantee, even from a German bank.

**Obstacles**
- As Swiss companies do not de facto have to pay a deposit due to their membership in a professional association, this amounts to discrimination against foreign companies.

**Demands of the skilled crafts sector**
- The deposits must be abolished as they do not comply with the freedom of movement agreement.
- Ever since the facilitation of so-called craft’s insurance was terminated in 2019, the expense of a bank guarantee or cash deposit is no longer proportionate.
- Compulsory deposits should at least be limited to service providers who did not fulfil their financial obligations towards the Swiss enforcement authorities in the course of previous service contracts.
- Compulsory deposits of CHF 10,000 for orders of CHF 20,000 are out of all proportion and should only be applied to orders with a volume of CHF 100,000 and more.
Swiss work and wage conditions must be complied with when posting workers. These relate in particular to the payment of posted workers which has to be adapted to Swiss regulations when working on Swiss territory. The wages of posted personnel are calculated using a complex procedure.

**Obstacles**
- It is not clear with extensive services which CLA applies.
- The expenses regulation is not transparent.

**Demands of the skilled crafts sector**
- Transparent presentation of the expenses ruling by including expenses directly in the wage calculator.
- Leniency must be shown in the event of minor infringements which obviously result from the complex process of comparative wage calculation or non-uniform application by the cantons and incorrect allocation to a CLA. The minor infringement limit must be raised significantly from its current level of CHF 50 or 100.
CONTROL PROCEDURE

Control of compliance with Swiss work and wage conditions is the task of a so-called equality committee (Paritätische Kommission). Depending on the amount by which wages are undercut, this committee often imposes a contractual penalty and always charges control costs. The equality committee can use a paid deposit for this purpose. In the event that undercutting of wages is determined, the canton is also obliged to impose a fine irrespective of whether the refund and the sanction imposed by the equality committee have been paid.

Obstacles

- The calculation of the amount of the control costs is not regulated and it is inexplicable how they are calculated in the case of minor infringements.
- The charging of enforcement costs is inexplicable. These are hidden charges which are not compatible with the freedom of movement agreement.
- Only foreign companies are affected by double sanctions. This amounts to discrimination against foreigners.

Demands of the skilled crafts sector

- Control costs must be transparent and comprehensible.
- No enforcement costs may be charged.
- Double sanctions must be abolished.
- Leniency must be shown in the event of minor infringements which obviously result from the complex process of comparative wage calculation or non-uniform application by the cantons and incorrect allocation to a CLA.
Since 01.01.2018, the assessment basis for the mandatory tax registration of foreign companies in Switzerland has been expanded to include their total turnover (domestic and foreign turnover). Prior to this date, only turnover in Switzerland was used as the assessment basis. This now means that German companies with total worldwide sales of CHF 100,000 per annum are obliged by law to register for tax purposes. Only very small companies fall below the CHF 100,000 (91,707.38 euros, as of 22.08.2019) global sales mark. Consequently, most companies are affected by this change.

Obstacles

- On the basis of the below-listed cost factors, it is no longer worthwhile to take on small orders in Switzerland, especially for companies that only do so occasionally. That is why we are observing a sharp decline in the numbers of skilled craft in Baden-Württemberg who are providing services in Switzerland.
- The following prerequisites must be fulfilled in order to obtain a registration number from the Swiss tax authorities. First of all there is the obligation to commission a fiscal representative or person authorised to receive service of official communications. Foreign entrepreneurs who do not have their place of residence or seat of business in Switzerland are permitted to submit their tax returns by themselves – which is the case with most of them – require a fiscal representative on-site. Tax offices or the German-Swiss chamber of commerce and the like offer these services for a fee. Although a natural person resident in Switzerland can be appointed as a person authorised to receive service of official communications, companies very rarely make use of this option for understandable reasons.
- A tax account must be submitted at least once every quarter.
- Security, possibly a bank guarantee from a CH bank, 3 % of expected taxable turnover in Switzerland but at least CHF 2,000.
LUXEMBOURG

DECLARATION OF POSTING

The services of foreign companies must be registered with the SME ministry for a fee of 24 euros. The posting of workers (MEA) must be reported through the online portal é-Détachement. Documents such as the A1 and EU certificate, employee-specific certificate of ability to work issued by the industrial health and safety service and confirmation of registration must be uploaded during registration. A natural person resident in Luxembourg must be appointed to act as a “holding agent”. The higher social wage and binding collective agreements must be observed. One month after the service has been provided, proof of the amount of wages paid must be uploaded without any request to do so. In the event of non-compliance, a reminder is issued and the company has 10 days time to fulfil its obligations.

This procedure is practicable for companies from the craft sector and easy to implement. The most practical aspect is that no documents have to be kept at the place where the services are rendered as it is a purely digital solution.

Obstacles

- Although the posting portal permits registration in German, the information on how the posting is to be realised and the terms and conditions for doing so is only provided in French.
- Even with small orders, offers must be calculated with the higher Luxembourg incentive wage structure.
- With dormant ex factory deliveries/provision of assembly services in Luxembourg, there is no possibility to apply the reverse charge mechanism, which would mean transferral of the tax liability to the recipient of the service.

Demands of the skilled crafts sector

- The portal with the registration information should provide very good information in German on the terms, conditions and procedure.
NO REVERSE CHARGE MECHANISM WITH PROPERTY SERVICES

Commercial customers require a Luxembourg VAT ID number in order to register and charge Luxembourg VAT. The reverse charge mechanism for services is applied in a binding manner in the B2B area according to EC law, provided that the service recipient is established in another EU country.

The option of applying the reverse charge mechanism is not uniformly regulated throughout the EU, however, where dormant deliveries and assembly work are concerned, as other principles apply to localisation for this type of performance. This means that the option does not exist in Luxembourg of transferring tax liability to the recipient of the service where dormant deliveries and assembly work are concerned.

### Obstacles

- Short-term orders are hardly possible for newcomers to the market as the VAT ID number must already be on hand in order to register the posting.
- For this reason, the necessity to register is often recognised too late or not at all without qualified external advice.

### Demands of the skilled crafts sector

- The European VAT regulations regarding reverse charge rules in the property sector must be significantly simplified.
- Alternatively, transparency must be increased with regard to which rules apply in which EU country.
BWHT

REPRESENTING THE INTERESTS OF THE SKILLED CRAFTS SECTOR

Baden-Württembergischer Handwerkstag e.V. is the umbrella association of the eight chambers of skilled crafts and 55 professional associations of skilled crafts in the German state of Baden-Württemberg. It is a member of the German Confederation of Skilled Crafts, which has its seat in Berlin. BWHT carries out the coordinated function between the skilled crafts organisations on a regional level, formulates uniform political positions and is the expert point of contact for politics and the media in all matters concerning skilled crafts and trades.

133,000 mainly small and medium-sized companies from the craft sector each with an average of six employees generate sales of over 100 billion euros every year. That is why politics relating to small and medium-sized businesses is one of the key tasks of BWHT as the representative of their interests.

Associated with it is Handwerk International Baden-Württemberg, the first point of contact for entrepreneurs in all matters concerning Europe and foreign trade. Together with the foreign trade experts of the chambers of skilled crafts, the consultants support the businesses in the state in their cross-border business activities, from the opening up of foreign markets to the processing of orders. In this way, they experience every day the concrete effects that trade barriers have in everyday business practice. Their detailed specialised skills and consulting experience form the basis of this brochure.

Point of contact for European relations at Handwerk International:

**Aline Theurer**

Head of European Relations
Heilbronner Strasse 43
70191 Stuttgart, Germany
Tel +49 711 1657-252
at@handwerk-international.de
www.handwerk-international.de